

The Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws

Follow up items from the March 6, 2012 Meeting

The items addressed below deal with issues discussed during the March 6, 2012 meeting of the Joint Legislative Study Commission on the Modernization of North Carolina Banking Laws, a subsequent meeting with the Co-Chairs of the Commission, as well as those identified by OCOB staff or raised by various stakeholders in comments.

1. Pursuant to direction of the Chairs, OCOB staff has drafted a series of amendments to the proposed legislation that would remove all references to fees from the statute and leave them to be addressed in rules as is the current practice. The proposed amendments set forth below would clarify the statutory authority to prescribe applicable fees by rule and delete all proposed statutory provisions setting forth fees.
 - a. Rewrite 53-2-4(a) to read:

“(a) As authorized in Chapters 53, 54B, 54C and this Chapter, the OCOB shall be funded by annual or periodic assessments, licensing fees and charges, and reimbursements for examination costs. This list is not exclusive. However, the OCOB may not levy assessments, fees, or other charges except as expressly provided by rule adopted in accordance with the provisions of Chapter 150A of the General Statutes and the provisions of this section. ~~statute.~~ The Commissioner is authorized, in the exercise of reasonable discretion, to establish the time, place, and method for the payment of the assessments, fees, charges and costs.”
 - b. Rewrite 53-3-1(a) to read:

“(a) The applicant shall file an application for permission to organize a bank and for a charter with the Commissioner. The application shall be in the form required by the Commissioner, and shall contain such information as the Commissioner requires, set forth in sufficient detail to enable the Commissioner to evaluate the applicant’s satisfaction of the criteria set forth in G.S. 53C-3-4. The applicant shall pay a non-refundable application fee ~~in the amount of \$10,000~~ as provided by rule at the time of filing the application.”
 - c. Rewrite 53-7-101(b) to read:

“(b) The Commissioner may require a person who is obligated to file an application under this Part to appoint an agent resident in this State for service of process upon the filing of such notice or as a condition to the acceptance of such application for review. The application for approval shall be in a form required by the Commissioner and shall be accompanied by such a fee ~~of \$5,000~~ as may be required by rule.”

- d. Rewrite 53-7-102(a)(2) to read as it did before it was amended at the March 6 meeting:
“(2) All filing fees required by a rule of the Commissioner; and”.
 - e. Rewrite 53-7-201 to read:
“§ 53-7-201. Combination authority.
With the approval of the Commissioner, a bank may combine with one or more depository institutions. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee ~~of \$5,000~~ as set forth by rule.”
 - f. Rewrite 53-7-207(b) to read:
“(b) The bank seeking approval of such a combination shall file with the Commissioner an application for approval, copies of the agreements under which the bank proposes to effect the combination, and such additional information as the Commission shall require by rule or as is required by the Commissioner in connection with such application in order to achieve the objectives of this Chapter. Such bank shall pay to the Commissioner a fee ~~of \$1,000~~ as set forth by rule.”
 - g. Rewrite 53-7-301 to read:
“§ 53C-7-301. Conversion to a North Carolina bank charter.
Any depository institution that is not a bank may apply to the Commissioner for permission to convert into a bank and for certification of related amendments to its organizational documents necessary to effect such conversion. The application for approval shall be in the form required by the Commissioner and shall be accompanied by a fee ~~of \$5,000~~ as set forth by rule.”
2. § 53-8-2 governs assessments and fees for banks. The corresponding section of current law contains the provisions dealing with assessments for consumer finance agencies. It also has language permitting adjustment of bank assessments from the statutory formula when economic circumstances warrant such adjustments.
 - a. The section of current law corresponding to 53-8-2 is 53-122. It also contains the provisions dealing with the fees and assessments for consumer finance licensees. That provision was removed from 53-8-2 and should be moved to the portion of Chapter 53 dealing with consumer finance companies, Article 15. OCOB recommends moving the assessment provision to a new § 53-191.1 to read:
“§ 53-191.1. Assessments of Consumer Finance Licensees.
Each consumer finance licensee shall pay an assessment not to exceed eighteen dollars (\$18.00) per one hundred thousand dollars (\$100,000) of assets, or fraction thereof, plus a fee of three hundred dollars (\$300.00) per office; provided, however, a consumer finance licensee shall pay a minimum annual assessment of not less than five hundred dollars (\$500.00). The assessment shall

be determined on a consumer finance licensee's total assets as shown on its report of condition made to the Commissioner of Banks as of December 31 each year, or the date most nearly approximating the same. If the Commissioner of Banks determines that the financial condition or manner of operation of a consumer finance licensee warrants further examination or an increased level of supervision, the licensee may be subject to assessment not to exceed the amount determined in accordance with the schedule set forth in this section."

- b. Pursuant to direction of the Chairs, OCOB staff has drafted an amendment restoring flexibility in assessment collections from banks by adding a new subdivision to 53-8-2. It was also necessary to make several conforming amendments to 53-8-2 as a result of moving consumer finance assessments to Article 15. OCOB recommends amending 53-8-2 by adding a new subdivision (4) to read:

"(4) In the first half of each calendar year, the State Banking Commission shall review the estimated cost of maintaining each division of the office of the Commissioner of Banks for the next fiscal year. If the estimated assessments provided for under Chapter 53 for any division shall exceed the estimated cost of maintaining that division for the next fiscal year, then the State Banking Commission may reduce by a uniform percentage and assessments provided for in Chapter 53 for that division. If the estimated assessments provided for in Chapter 53 for any division shall be less than the estimated cost of maintaining that division for the next fiscal year, then the State Banking Commission may increase by a uniform percentage and assessments provided for in Chapter 53 for that division to an amount which will increase the amount of assessments to be collected to an amount at least equal to the estimated cost of maintaining that division the office of the Commissioner of Banks for the next fiscal year."

3. In two places in Article 7A, the proposed law requires that a notice be given "not more than 30 days before nor less than 10 days after" a certain event. The intent was to create a window of 40 days during which the notice is to be given. To accomplish that intent, the later time period should be "not more than 10 days after...." OCOB recommends addressing those two provisions as follows:
 - a. Rewrite the first sentence of 53-7-103 to read:

"A person filing an application for approval of a control application shall publish a public notice of the filing of the application not more than 30 days before nor ~~less~~ more than 10 days after the filing of the application with the Commissioner."
 - b. Rewrite the first sentence of 53-7-202(b) to read:

"A bank filing an application for approval of a combination shall publish a public notice of the filing of the application not more than 30 days before nor ~~less~~ more than 10 days after the filing of the application with the Commissioner."

4. Proposed 53-7-207(a) deals with combinations with and among subsidiaries. A number of questions were raised about the provisions of this section, particularly subsection (a), indicating a lack of clarity and overbreadth. OCOB determined that revisions to enhance the clarity and scope of 53-7-207(a) should be made and recommends that the Commission rewrite 53-7-207(a) to read:

“(a) With the approval of the Commissioner, a bank may combine with a subsidiary so long as ~~a the bank is the resulting entity of the combination and may combine another company with a subsidiary. subsidiary so long as the subsidiary of the bank is the resulting entity of the combination.~~ A combination of a subsidiary and another company shall be effected in accordance with organizational law applicable to each. The ~~merger~~ combination of two or more subsidiaries of the same bank is exempt from the provisions of this section as is the combination of two or more subsidiaries of the same bank holding company.”

5. 53-8-12(b) refers to a publishing requirement that no longer exists and makes reference in two places to time limits of a number of “days,” which begs the question about how to treat weekends and holidays. OCOB recommends deleting the reference to publication and specifying that the two time periods are “business days.” OCOB recommends that 53-8-12(b) be rewritten to read:

“(b) Every bank failing to make and transmit any report which the Commissioner is authorized to require by the Chapter, and in and according to the form prescribed by the Commissioner, within 10 business days after the receipt of a request or requisition therefore, or within the extension of time granted by the Commissioner, ~~or failing to publish the reports as required,~~ shall be notified by the Commissioner, and if the failure continues for five business days after the receipt of the notice, the delinquent bank shall be subject to a penalty of up to one thousand dollars (\$1,000.00) The penalty provided by this section shall be recovered in a civil action in any court of competent jurisdiction, and it shall be the duty of the Attorney General to prosecute all such actions.”